UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

- -x

In the Matter of:

DELPHI CORPORATION,

Debtor.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

March 1, 2007

10:13 a.m.

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

CLAIMS Objection Hearing Regarding Claim of Eva Orlik

CLAIMS Objection Hearing Regarding Claim of Joseph Reno

CLAIMS Objection Hearing Regarding Claim of DBM Technologies, LLC

CLAIMS Objection Hearing Regarding Claim of Edith James

CLAIMS Objection Hearing Regarding Claim of Freddie L. Johnson

CLAIMS Objection Hearing Regarding Claim of Terrence Evans

CLAIMS Objection Hearing Regarding Claim of Thomas Wimsatt/Donna Wilson

CLAIMS Objection Hearing Regarding Claim of Harold Woodson

CLAIMS Objection Hearing Regarding Claim of LaborSource 2000, Inc.

Transcribed By: Esther Accardi

A P P E A R A N C E S :

SKADDEN ARPS SLATE MEAGHER & FLOM, LLP
Attorneys for Debtor
Four Times Square
New York, New York 10036

BY: JOHN K. LYONS, ESQ.
THOMAS J. MATZ, ESQ.
MS. DIAZ, ESQ.

LAW OFFICE OF HARVEY ALTUS, P.C.
Attorney for LaborSource 2000
20500 Northwestern Highway
Farmington Hills, Michigan 48334

BY: HARVEY ALTUS, ESQ.
(Telephonically)

LATHAM & WATKINS, LLP
885 Third Avenue
New York, New York 10022

BY: JUDE GORMAN, ESQ.

P R O C E E D I N G S

THE COURT: Please be seated. Okay. Delphi Corporation.

MR. LYONS: Good morning, Your Honor. John Lyons on behalf of the debtors. I have here with me --

MR. ALTUS: Harvey Altus on behalf of LaborSource 2000.

THE COURT: Okay.

MR. LYONS: And, Your Honor, I have Mr. Matz and Ms. Diaz who are also seated at counsel table, and Ms. Kraft and Mr. Unruh, as well, on behalf of the debtors.

THE COURT: Okay.

MR. LYONS: Your Honor, this is the fourth claims hearing pursuant to the claims procedures that Your Honor entered last December. And with Your Honor's permission, I'll proceed through the agenda.

THE COURT: That's fine.

MR. LYONS: Okay. First on the agenda, Your Honor, we have a number of adjourned matters that were original set for hearing for today. And that would be the claim objection to the claim filed by Eva Orlik. The claim objection filed with respect to Mr. Joseph Reno. And then also a claim objection pursuant to our fourth omnibus claims objection filed with respect to DBM Technologies. Those three matters are being continued to March 21st. We have continued the

mediations for the first two claims unsuccessfully, so it looks like we may have a contested hearing for the Orlik claim and the Reno claim on March 21st.

THE COURT: Okay.

MR. LYONS: Next, Your Honor, we have a number of uncontested matters that were scheduled for hearing. I'm happy to report that we were able to settle five of the six matters that are currently pending for today. The claim of Leslie James, asserted in the amount for 1.13 million, we've settled that for 100,000 dollars. The claim filed by Freddie Johnson was asserted in the amount of 300,000 dollars, we've settled that for 15,000 dollars. The claim filed by Terrence Evans, which was asserted in the amount of 300,000 dollars, has been settled for 5,000 dollars. And when I say settled, I mean an allowed general unsecured claim. The claim filed by Mr. Thomas Wimsatt/Donna Wilson was asserted in the amount of 250,000 dollars, and the parties have agreed to settle that for 15,000 dollars. And then, finally, the claim filed by Mr. Harold Woodson, filed at an undetermined amount, has been settled for 15,000 dollars.

THE COURT: Okay.

MR. LYONS: So upon execution of the settlement agreements, Your Honor, we will forward to Your Honor stipulations which will allow the claim in that amount and waive any other claims.

THE COURT: Okay. Just when I do the amounts, you don't need to notice any of those then, right?

MR. LYONS: No. These have all been settled pursuant to the settlement procedures order.

THE COURT: The amounts are below the caps where you would need to notice them?

MR. LYONS: Correct.

THE COURT: All right.

MR. LYONS: So those will be forthcoming shortly, Your Honor.

THE COURT: Okay.

MR. LYONS: Your Honor, that brings us all the way to the only contested matter for today, and that is the claim objection hearing regarding the claim of LaborSource 2000, Inc. Your Honor, we have had -- we filed the appropriate notices and had the appropriate meet and confers as well as mediations with respect to this claim. Counsel for LaborSource and I have agreed to limit the record here to just what has been filed. And there will be no live testimony or no cross-examination. Parties have agreed to that, to just argue on basic legal submissions.

THE COURT: Okay.

MR. LYONS: However, it will be, you know, on the evidence, Your Honor. We do have -- we're asking Your Honor not to review it under, you know, motion to dismiss standard,

rather, and enter a judgment on the merits.

THE COURT: So, for example, LaborSource is not going to cross-examine the two declarants?

MR. LYONS: That's the understanding of the parties, Your Honor.

THE COURT: Okay.

MR. LYONS: And just as a housekeeping matter, I would like to introduce formally into evidence -- offer and introduce into the evidence the declarations that we've filed in connection with our brief. And also -- so that would be the Robins declaration, the Hudson declaration and also the certificate by Ms. Kraft, which attaches the standard terms and conditions of the Delphi purchase orders as Exhibits 1, 2 and 3. So if I could offer those?

THE COURT: And that includes the exhibits to Robins which are the agreements?

MR. LYONS: Yes, Your Honor.

THE COURT: Okay. That's fine. Those will be admitted.

(Robins declaration was hereby received as Debtor's Exhibit 1 for identification, as of this date.)

(Hudson declaration was hereby received as Debtor's Exhibit 2 for identification, as of this date.)

(Certificate by Ms. Kraft was hereby received as Debtor's Exhibit 3 for identification, as of this date.)

MR. LYONS: And as well, Your Honor, Mr. Altus can just confirm, I do have the docket from LaborSource's Chapter 7 case. The case has been closed. The final decree has been entered. If Mr. Altus would confirm that I could just stand on that confirmation, otherwise we do have the docket sheet for LaborSource 2000.

MR. ALTUS: Yeah, that case has been closed.

THE COURT: Okay.

MR. LYONS: Okay, Your Honor, that's all I need for housekeeping. Your Honor, now I'm prepared to argue, if Your Honor would like.

THE COURT: That's fine.

MR. LYONS: Your Honor, based upon the submissions that we've made in our brief and including the declarations that have now been introduced into evidence, Your Honor, we respectfully submit that LaborSource's claim should be disallowed. The well-settled standard for proof of claim is it constitutes prima facie evidence of validity. Once rebutted, the burden shifts back to the claimant to prove the -- to come forward with evidence to prove the allowed ability of the claim. We submit that our briefs and our declarations have sufficiently rebutted that presumption. And, Your Honor, there is not any evidence at all that has been submitted by LaborSource to prove the validity of the claim. Indeed, the only evidence that Your Honor has before it is the declarations

of Mr. Robins and Mr. Hudson which are uncontroverted and show that no representations were made as alleged by LaborSource 2000 in their complaint of future business or evidence of certain volume guarantees. Indeed, the contracts that Delphi entered into with LaborSource were requirements contracts which are pretty standard in the industry which again allow -- which do not give any volume guarantees to a particular supplier due to the fragile nature of the supply chain in the automotive industry: GM, Ford, Daimler-Chrysler, at any time they discontinue a product line and that flows down to the tier one and the other tier suppliers. So that's why the structure of these contracts in this industry are those of requirements contracts, and it was no different here.

There are a number of merit base points, Your Honor, and I'm not going to belabor them; I think we've adequately briefed them in our brief. But there's a threshold issue as to whether LaborSource even has standing to bring this claim in light of its Chapter 7 case and the fact that a final decree has been entered. And we've cited Your Honor a few cases, including U.S. Dismantlement case, which says that once a corporation goes to Chapter 7 and a final decree's been entered it's a defunct corporation, it does not have standing to pursue a pre-decree cause of action against another party. So for that basis, we believe there's a threshold matter where LaborSource's claim should be disallowed.

To the merits of the claim, Your Honor, all of these purchase orders were made pursuant to Delphi's standard terms and conditions. The purchase orders were fully integrated. Said, you know, basically evidence the parties' agreement that there were no other representations made except of that contained in the purchase order. So, again, we think that is a basis to disallow the claim.

Finally, the uncontroverted testimony of Mr. Robins and Hudson confirms that no such promises were ever made to LaborSource. So from an evidentiary standpoint, we believe there's no basis for the underpinning of LaborSource's claim.

And then finally, Your Honor, the settlement and release agreement which was signed in June 2004 actually released Delphi from any pre-June 2004 potential claims by LaborSource. Again, the purchase orders were entered into well before June 2004. So on the basis of the release, there is no claim against Delphi. And if there are any promises which, of course, Mr. Hudson and Mr. Robins contest, if there were any promises that were made after that release, the agreement and the purchase orders required that those be in writing and there are no such writings, Your Honor.

So for all these reasons, Your Honor, Delphi respectfully submits that LaborSource 2000's claim should be disallowed in its entirety.

THE COURT: Okay. Mr. Altus?

MR. ALTUS: Okay. Well, thank you for allowing me to appear in this manner, first of all, Judge. I appreciate that. I think what we have to do in a situation such as this is, Judge, is recognize that this claim was started in the Michigan Circuit Court and was probably be better suited as a state lawsuit than as claim in bankruptcy. The reason being that for our claim, we need to go beyond the written contract. Our claim is premised upon nondisclosure misrepresentations, that I'll mention, which resulted in my client submitting its bid to begin with. Delphi did not disclose that there was a union contract already in place when it first submitted its bid, that the union contract was going to be binding or was expected to be binding on my client, that there were already grievances pending there with respect to the job that was at issue. This was a job in Lansing, Michigan having to do with production of certain automobile contracts for General Motors. So my client came to an existing situation that it did not know about when it submitted its bids and is something that we claim Delphi should have at least informed them of instead of just submitted a general bid request. My client bid for it and then found out it was getting into something that it had no idea that it was getting into.

Mr. Lyons described that there was a settlement and relief agreement that was entered into between the parties later on when it was discovered that basically my client was

going to go out of business if it did not receive some relief. And as to that document, Your Honor, I think that was more a -- I think our claim as to that document is that it was more of a claim of adhesion. My client had little choice but to sign that document. It got a little bit of relief from Delphi but it was certainly not enough to keep them in business. And my client had little choice but to sign that document, otherwise it would have been out of business even sooner than it did go out of business.

My client struggled along and kept the project going until it finally did shut down. After which my client also had to shut down, basically. And as a result of the omissions and the misrepresentations, essentially the bullying of Delphi with respect to a much smaller company and a much more vulnerable company, my clients suffered a number of damages, not the least of which that it was out of business and had to file Chapter 7.

There was personal cash liability accrued on behalf of LaborSource 2000 of the amount of 200,000 dollars. There were a number of bridge loans that they had to take out in order to keep themselves running and keep themselves satisfying what they felt to be their contractual requirements with Delphi, and those were 160,000 dollars. There were a number of additional damages relating to Workers' Compensation claims that were about 65,000 dollars and a number of other, you know, lost profits and so forth.

And so I think what the crux of our claim is not so much reading the written contract and deciding on now, but going beyond the written contract recognizing that Delphi really did not fully disclose, in the first instance, what this bid was all about. And then in the second instance with respect to the settlement and relief, I think it must be recognized that they had a couple of unequal bargaining parties and my client was in a position basically where they had to accept what Delphi was offering and that was it. And it was not enough. It was enough to finish the project for Delphi but it was certainly not enough to keep them in business afterwards. And as a result, these other damages were suffered.

THE COURT: I thought the project wasn't finished, I thought it was terminated?

MR. ALTUS: I think General Motors -- it was finished with respect to my client, I'm sorry. General Motors terminated it earlier than was expected, but my client completed its contractual obligation. GM may have terminated it earlier, that part is true. But my client completed it. They did everything that they were expected to do until the project shut down.

THE COURT: Then how could there be damages for early termination?

MR. ALTUS: The project was supposed to be completed

through, I believe it was the end of 2005. It was not expected to be terminated early by General Motors. This was also something that was not explained to my client when they initiated the bid process.

THE COURT: But if your client did all the work that it was supposed to do, why would the subsequent termination by GM affect it damages in any way, even assuming the validity of this theory?

MR. ALTUS: Okay. My client was paid based upon a certain dollar amount per hour for employees supplied to the project. It was anticipated that a certain number of hours would be worked. Delphi did not disclose, at the initiation of the bid process, the amount of downtime that would be expected. They were expecting to be working for a certain number of weeks during the year and my client was expecting that number of weeks during the year, and it did not happen.

My client was not advised also that General Motors might actually terminate the contract early. Because they did terminate the contract early, again, my client was not afforded the expected number of service hours. And as a result, lost a certain process and --

THE COURT: Why shouldn't the parol evidence rule apply here? Mr. Altus?

MR. ALTUS: I'm sorry, I thought I lost you there for a second.

THE COURT: Why shouldn't the parol evidence rule apply here?

MR. ALTUS: As I stated before, I think the case was much more conducive to the state lawsuit that was started.

THE COURT: Well, doesn't Michigan law recognize the parol evidence rule?

MR. ALTUS: Well, it does. But I think it goes beyond that, Judge. I think our claim goes beyond, like I indicated, that misrepresentation and omissions in the first instance and then the unequal bargaining power of the parties when it came to the settlement and relief that occurred on down the road.

THE COURT: Okay. All right. Anything further by either side?

MR. LYONS: Just a note, Your Honor. The settlement and combination agreement, the last paragraph does reflect that -- and it's paragraph 15, Your Honor. It says "consultation with counsel of the parties hereto acknowledge that they have been given the opportunity to consult with counsel before executing this agreement. And they are executing such agreement without duress or coercion or without reliance and any representations, warranties or commitments other than those representations, warranties and commitments set forth in this agreement and the purchase order." And I think, Your Honor, it's clear that LaborSource 2000 was

represented by counsel with respect to this agreement. So I think that would cut against this adhesion theory. And again, Your Honor, although Mr. Altus has argued, there is no evidentiary support for his arguments in the current record.

THE COURT: Okay. Is there any dispute that as far as the written agreements are concerned, Delphi has performed, has made the payments provided for in the written agreements?

MR. ALTUS: No, Judge, we can't dispute that.

THE COURT: Okay. All right. Okay. I have before me the debtor, Delphi Automotives Systems, or DAS's, objection to the proof of claim filed by LaborSource 2000, Inc. in this Chapter 11 case. That claim asserts damages not under, but extrinsate to agreements entered into by DAS and LaborSource before DAS's Chapter 11 case and also before LaborSource's Chapter 7 case.

The claim, essentially, is that under various theories, Delphi owes LaborSource for lost revenue due to unexpected downtime in providing personnel for a DAS project, since under the contracts, DAS was obligated to pay only for hours worked. As well as in respect to the early termination of the project.

In addition, LaborSource claims that it is owed increased Workers' Compensation premiums necessitated due to unanticipated union requirements, 65,000 dollars in outstanding employee medical bills resulting from the cancellation of

medical insurance that LaborSource could not sustain, apparently, as a consequential result of the termination of the project and the losses that LaborSource sustained under the contracts. And 160,000 dollars of additional interest and expenses for bridge loans that LaborSource sought to maintain during the course of the project. In addition, it makes a claim that pursuant to a unilateral proposal by Delphi to various suppliers, including to LaborSource, to share the savings of any cost savings ideas that the suppliers passed on to Delphi, that LaborSource made a suggestion in response in respect of something it called a job bank, without further description, that Delphi used that suggestion and realized savings therefrom. This claim is not quantified or provided any further support.

The parties have agreed on the evidentiary record in respect of this proceeding and I've reviewed it and have concluded for a number of reasons, which I'll now go through, that the claim is as DAS asserts and should indeed be disallowed in its entirety. That is because DAS has provided sufficient underpinnings and evidentiary support to rebut that prima facie validity of the claim and consequently shifted the burden of sustaining the claim to LaborSource and LaborSource has not sustained that burden. As an initial matter, DAS argues that LaborSource lacks standing to assert the claim in the first place. The basis for that contention is that

LaborSource has gone through its own Chapter 7 case, which has now been concluded, and the trustee in that case did not pursue this claim. And, consequently, as a result of the conclusion of the Chapter 7 case, LaborSource, under Section 7027 of the bankruptcy code, not having received a discharge as a corporate entity, is, as a result, a defunct entity without standing to pursue claims on its own behalf.

It cites in support of its standing argument two district court cases, U.S. Dismantlement Corporation v. Brown Associates Inc., 2000 Westlaw 433971 Ed. PA, April 13, 2000, and Liberty Trust Company Employees Profit Sharing Trust v. Holt, In re Liberty Trust 130 BR 467, (WD Texas 1991). Those cases adequately go through the rationale for the proposition that a former Chapter 7 debtor whose case has been completed lacks standing to assert on its own behalf any litigation claims.

There's a surprising dearth of case law in this area. And I note that there is at least one conflicting case also from the Eastern District of Pennsylvania In re Fifth and Mitchell Street Corporation 2001, Westlaw 34355652 ED Pennsylvania, December 13, 2001. And I've reviewed that and I've concluded that under these circumstances, this being a Michigan corporation, which under Michigan law as a dissolved corporation would still have the ability to sue and be sued in its corporate name. See MCLS Section 450.1834(e) 2006. The

better view is that LaborSource would have standing to pursue litigation here.

I note that in addition, while both U.S. Dismantlement and the Liberty Trust cases refer to such a former Chapter 7 debtor as a "defunct corporation" and refer to and rely heavily on dictionary definitions of the term defunct, which mean under those definitions that it is effectively dead and no longer capable of acting on its own behalf. The code, the bankruptcy code, itself, does not so characterize a former debtor like LaborSource, it merely says that a corporate debtor in Chapter 7 does not receive a discharge. Both those cases as well as the Fifth and Mitchell Street Corporation case discuss the rationale for not giving Chapter 7 corporate debtors a discharge, which is that Congress wanted to prevent such entities from selling their corporate shells as a tax avoidance tactic. But that strategy can be fulfilled, I believe, equally simply by recognizing that such an entity does not receive a discharge since the debt would still exist and vitiate any benefits obtained from trafficking in that corporate shell. So while I understand the logic of the U.S. Dismantlement case, I believe that here, where under Michigan law a dissolved corporation has the ability to sue or be sued, that LaborSource has standing.

I also note that there is obviously a possibility that there being it appears at least no formal abandonment of

this cause of action by the Chapter 7 trustee, he or she could conceivably seek to reopen the case if there was any merit to the claim. And, therefore, it makes sense for me to address the merits, in any event, since they are now briefed and there's a factual record before me. On the merits, it's clear that this claim should be dismissed. First, in respect of certain of the damages claimed, namely increased Workers' Compensation premiums totaling 320,000 dollars due to allegedly unanticipated union requirements, 65,000 dollars in outstanding employee medical bills, and 160,000 dollars of additional interest and expenses for bridge loans, the record is clear that LaborSource has not been damaged in respect of these claims in the capacity in which it's suing, which is not on behalf of its estate, rather in it's own capacity, because its Chapter 7 case was a no asset case and the creditors who asserted these claims against it did not receive a distribution.

In addition, the claim that LaborSource has provided no substantiation for its assertion of an unliquidated or unquantified claim for allegedly providing DAS with the concept of a job bank. As I've noted before, in addition to being an unquantified claim, there's no explanation in the claim as to what that concept was or what a job bank here was meant to mean. Moreover, the assertion, even if there were sufficient particularity to say that there would be an unliquidated claim

that might be subject to reconsideration once the claim was liquidated, is refuted by the declaration of James Robins, which is uncontroverted.

That leaves the claim by LaborSource for lost profits and additional costs allegedly incurred and paid by it for downtime or early termination and the like under the agreement -- I'm sorry, or extrinsate to the agreement between the parties. That agreement, I believe, is clear on its face as to the parties' intentions. And, consequently, is not subject to the admission of extrinsate evidence to contradict its terms. See Cook v. Little Caesar Enterprises, Inc. 210 F.3d 653, 656 (6th Circuit 2000) which discusses and construes Michigan law regarding the parol evidence rule. And I note parenthetically that the parties appear to agree that Michigan law would apply here as to the merits of the claim, and even if they did not agree, given the location of the contract and its performance, I would apply Michigan law.

The agreement between the parties is a purchase order which they entered into following a bid submitted by LaborSource which was accepted by DAS, and which incorporates the bid as well as additional terms. The bid itself is clear on its face that the labor provider, that is LaborSource, is to be paid only for hours worked. There is no provision providing for compensation for downtime or for changes in the labor template. In fact, under Section 2.1 of the requirements for

the bid, it's provided that the template will change based on volumes the manufacturing process product changes, etcetera. This bid was incorporated in the purchase order which is attached as an exhibit both to the proof of claim as well as to the Robins Affidavit. That purchase order has a clear provision providing that it sets forth the complete and final agreement between buyer and seller and that no other agreement in any way modifying any of set terms and conditions will be binding upon the buyer, that is DAS, unless made in writing and signed by buyer's authorized representative. The agreement also incorporates specifically by reference the terms and conditions of January 2001 which, as the agreement states, the supplier has received a copy of. Those terms and conditions are also in evidence and they provide for, among other things, again, an integration provision requiring that any changes to them be expressly agreed to in writing by DAS, that's found in paragraph 1. And as set forth in paragraph 11, the buyer, in addition to any other rights to terminate the contract, may immediately terminate all or any part of the contract at any time and for any reason by notifying the seller in writing and limiting further the seller's sole and exclusive recovery therefrom without regard to legal theory to claims that would not include the type of claim asserted in this claim by LaborSource for or related to the early termination of this contract.

There is a provision in the terms and conditions, paragraph 3, which states that the buyer may at any time require seller to implement changes to the specifications or design of the goods or to the scope of any services or work covered by the contract and that buyer will equitably determine any adjustment in price or delivery schedules resulting from such changes, and that the parties will resolve any disagreement arising out of such changes. There are two responses to that provision here. The first is that the bid and purchase order themselves more specifically put the supplier on notice that such changes may or will occur, therefore those more specific provisions would govern.

In addition, however, the parties did agree to alter the terms of their agreement. Such alternation being set forth in writing in a settlement and accommodation agreement dated June blank 2004, in which Delphi agreed without any admission, and, in fact, a no admission provision was contained in the agreement, that it had any obligation to do so and was not admitting any liability by entering into this agreement. But nevertheless, Delphi agreed pursuant to the settlement agreement to increase the amount that it would pay under the purchase order in certain respects.

In addition, importantly, however, the parties in their amendment and settlement agreement provided "neither the purchase order nor this agreement create any obligation of

Delphi to purchase, obtain or pay for any minimum number of hours of any personnel. And supplier and Delphi agreed that Delphi is under no such obligation. In addition, nothing contained in this agreement limits in any manner Delphi's right to reduce Delphi's requirements of supplier or to terminate the purchase order in accordance with its terms including without limitation Delphi's termination right in accordance with Section 13 of the Delphi terms and conditions January 2001, which have been and remain incorporated in the purchase order by reference." In addition, in paragraph 3 of the settlement agreement "the supplier released Delphi of all claims arising and relating in any way to the purchase order based upon acts or occurrences at any time prior to the date of the settlement agreement." Finally, the supplier, in paragraph 2, "ratified and confirmed its obligations to provide the services in accordance with terms of the purchase order, as amended, in accordance with this agreement. And represented and warranted to Delphi that the supplier had no offsets or defenses to the obligation of supplier to perform under the purchase order, as amended, in accordance with the agreement."

Consequently, it appears to me crystal clear that consistent with the bid, the purchase order, the parties reconfirmed in their amendment to the purchase order that their contractual arrangement was a requirements contract and that among other things Delphi had no obligation to pay for any

minimum number of hours to the supplier. And, of course, that is the basis for the supplier's claim.

As set forth in the Little Caesar's case, the parol evidence rule as applied in Michigan excludes the admission of parol evidence where the party's intent that a written instrument be the complete expression of their agreement is clear on the face of the agreement. That is the case here, not only based on the terms that I have read but also by the integration provisions and no modification provisions of the agreement which, again, the Little Caesar's case refers to as barring parol evidence, see 210 F.3d at 656, 657. Such a requirements contract is recognized as valid and enforceable in or under Michigan law even if no requirements arose because of cancellation or termination, see J&B Sausage Company v. Department of Management and Budget, 2007 WL 28409, (Michigan Court of Appeals January 4, 2007), as well as Teak Corporation v. Dow Corning Corp., 962 F.2d 1119, 1126 (3d Circuit 1992) and Neofotistos v. Harvard Brewing Company, 341 Mass. 684, 689 (1961) for other constructions of requirements contracts. The only limitation on that rule is that the contracting party act in good faith in respect of its requirements. However, the evidence here does not show any absence of good faith by DAS. Indeed, I don't believe an absence of good faith is alleged. Moreover, the letter dated March 3, 2005 by Mr. Sharplee to Mr. Robins states, among other things, perhaps there was nothing

that could have been done to prevent these events from occurring from Delphi's perspective, that is the losses that occurred because of the overall nature of the project. So I conclude that Delphi acted in good faith and that its requirements contract should be enforced pursuant to its terms. And, in fact, it was performed according to its terms, there being no dispute that Delphi has paid and performed all of its obligations under the agreement.

LaborSource alleges that the 2004 amendment to that agreement and the settlement agreement and amendment was a contract of adhesion and therefore should be disregarded. Again, except for the evidence in the record as set forth in the whereas clauses in the 2004 amendment, that LaborSource was experiencing financial difficulties, there's no other evidence that DAS was acting in bad faith or in an unconscionable way in not paying LaborSource an excess of the amounts that it had agreed to pay LaborSource under the contracts. Consequently, I conclude that the amendment and settlement agreement is not a contract of adhesion and is enforceable. And further, that it is merely a confirmation except for the changes to the amounts that Delphi would pay, those changes being to LaborSource's benefit of the underlying requirements nature of the contract between the parties.

Finally, I note that even if there were ambiguities or other factors that would override the parol evidence rule,

there is no evidence in the record to establish that Delphi, as contended in the claim, mislead or defrauded LaborSource outside of the terms of the contract as to what it would be paid and what its profits would be under the contract. To the contrary, the only evidence in the record on this issue is that set forth in the Robins declaration and the Hudson declaration, both of which establish that there were no such misrepresentations for fraudulent inducement. So for those reasons, the claim should be disallowed in full.

MR. LYONS: Thank you, Your Honor. We'll submit an order for Your Honor's review.

THE COURT: Okay.

MR. LYONS: To that effect.

THE COURT: Thank you.

MR. LYONS: Your Honor, that's the last item on the agenda, we have nothing further.

THE COURT: Okay. Thanks a lot.

MR. LYONS: Thank you, Your Honor.

MR. ALTUS: Thank you, Judge.

THE COURT: Okay.

(Proceedings concluded at 11:05 a.m.)

I N D E X

E X H I B I T S

DEBTOR'S	DESCRIPTION	PAGE
1	Robins Declaration	7
2	Hudson Declaration	7
3	Certificate by Ms. Kraft	7

RULINGS

	Page	Line
LaborSource Claim Disallowed in Full	27	9

C E R T I F I C A T I O N

I, Esther Accardi, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Esther Accardi
Digitally signed by Esther Accardi
DN: cn=Esther Accardi, c=US
Reason: I am the author of this document
Date: 2007.03.09 16:05:35 -05'00'

_____ March 5, 2007_____

Signature of Transcriber Date

Esther Accardi_____

typed or printed name